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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 309(j) of the Communications Act

Competitive Bidding

PP Docket 93-253

Comments of General Communication, Inc.

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November 10, 1993

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SUMMARY

The Commission must follow the objectives outlined by Congress in designing the structure for competitive bidding so that all bona fide applicants can fully participate. The Commission must further link Blocks A and B as proposed herein so that bidders are not either unable to bid or disqualified as result of others actions. Specifically, the bidding for Blocks A and B should proceed as follows: (1) Submit national sealed bids for Block A; (2) Orally auction individual Block A MTAs; (3) Open the sealed bids for national Block A and compare the highest bid to the combined total of the individual bids for Block A to determine whether the individual or national bids prevail in Block A; (4) Submit national sealed bids for Block B - an entity that wishes to submit a national bid on Block B would not be precluded from doing so if it or any affiliated entity had won individual MTAs on Block A; (5) Orally auction individual Block B MTAs; (6) Open sealed bids for national Block B and compare the highest bid to the combined total of the individual bids on Block B to determine whether the individual or national bid prevails in Block B; (7) If the national bid prevails in Block B, allow the winning bidder, including any entities that meet the ownership attribution test, to withdraw any winning MTAs in Block A; (8) Re-auction the MTAs that have been returned or allow a grace period of six months for the winning bidder in Block B, including any entities that meet the ownership attribution test, to achieve compliance with any ownership restrictions, including the 40 Mhz restriction.

The 5% attribution rule must be changed to a higher number, such as 20%, especially for publicly traded companies and winning bidders must be given a grace period to come into compliance with any ownership restrictions. Also, for passive investors, such as funds, the 5% rule should be revised.

The Commission should create a non-dominant carrier 30 MHz block so that the preserve incentives of the dominant cellular carriers outlined herein do not occur.

Lastly, GCI addresses a few miscellaneous issues. Specifically, Blocks C through G should be auctioned in that order with combinational bidding only occurring from the BTA level to a single MTA level. The auction should begin with the smallest MTA and build-up to the largest MTA in each Block with bidders being masked. Rural telephone companies should only be given a preference in their limited franchise area. Long form applications should be submitted only by the winning bidder after the auction. Finally, mutual exclusivity for other services including fixed satellite service and point-to-point microwave does not appear to be appropriate.

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General Communication, Inc. (GCI) hereby comments on the Notice of Proposed Rule Making¹ to implement Section 309(j) of the Communications Act. Specifically, the Notice requests comment on how to implement competitive bidding for mutually exclusive applications, including licenses for Personal Communication Services (PCS). In these comments GCI will focus primarily on the rules applicable to PCS. GCI focuses on those rules because of the particular importance of PCS and the necessity of developing rules for auctioning of PCS in a short period of time.

I. Goals For Competitive Bidding

Under Section 309(j)(3) of the Communications Act, before using competitive bidding to select licensees the Commission must determine that use of competitive bidding will promote the objectives described therein. Those goals are as follows: (A) the development and rapid deployment of new technologies,

¹Notice of Proposed Rule Making, PP Docket 93-253, FCC 93-455 (released October 12, 1993).

products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays; (B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American public by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small business, rural telephone companies, and business owned by minority groups and women; (C) recovery for the public of a portion of the value of the public spectrum made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource; and, (D) efficient and intensive use of the electromagnetic spectrum.

To support the determination required by the Communications Act, the final rules governing competitive bidding must be designed to further the stated objectives. Therefore, the proposed rules for competitive bidding should be evaluated in light of these objectives.

One very important means of furthering these objectives is to design bidding procedures to encourage bidding by all bona fide applicants, without risk of unfair penalty or forfeiture. By encouraging bidding by all bona fide applicants, economic opportunity and competition are fostered, excessive concentration of licenses will be avoided, licenses will be disseminated among a wide variety of applicants, and the highest bids from the entity placing the greatest value on a license will be obtained.

This does not mean that GCI opposes license ownership restrictions or that bidding should be open to speculators. However, appropriate license ownership restrictions, if combined with inflexible bidding procedures, could

preclude many entities from even bidding for a license. This could occur even though the entity places the highest value on the license, would have submitted the highest bid, would have deployed the service rapidly and efficiently to provide service to the public and would comply with all ownership restrictions. Several aspects of this problem are discussed below.

II. Auction Rules - Bidding Sequence for Blocks A and B

The Commission must institute auction rules that will promote the goals outlined by Congress. The Commission has proposed to start the auction with Block A and go sequentially through Block G. GCI generally agrees with this proposal. However, the bidding for Blocks A and B must be linked in a manner not applicable to other blocks. Blocks A and B are different from the other blocks in that they are the only blocks for which the Commission proposes national combinational bidding and they are the only two blocks which, if combined, would violate the rule against accumulation of more than 40 MHz in a single area (not including the 20 MHz set-aside block for designated entities). Thus, a link in bidding for Blocks A and B is necessary so that participants who desire to obtain a license in either Block can, as is necessary, bid on both blocks.

For example, many entities such as GCI may intend to participate with a national consortium for a combinational bid for Block A or Block B, but may also wish to bid on individual MTA licenses in a particular area in case the national bid is unsuccessful. However, such a strategy is virtually impossible under the Commission's proposed procedures. As proposed, if a single member of a national consortium won a MTA in Block A and the national consortium won the

combinational bid for Block B, the rule prohibiting accumulation of more than 40 MHz would be violated. Alternatively, the winning bid by a single member of a national consortium in Block A might invalidate the consortium's bid for Block B.

Faced with this possibility, most entities involved in national consortia would forego bidding in Block A, perhaps even as a requirement of participating in the national consortium. This will lower the amount bid in Block A, reduce economic opportunity and discourage a diversity of applicants.

This problem can be remedied by allowing, in appropriate circumstances, winning bidders the option of either withdrawing a winning bid for individual MTAs or taking other action within a short grace period to come into compliance with ownership restrictions.

Specifically, the bidding for Blocks A and B should proceed as follows:

(1) Submit national sealed bids for Block A; (2) Orally auction individual Block A MTAs; (3) Open the sealed bids for national Block A and compare the highest bid to the combined total of the individual bids for Block A to determine whether the individual or national bids prevail in Block A; (4) Submit national sealed bids for Block B - an entity that wishes to submit a national bid on Block B would not be precluded from doing so if it or any affiliated entity had won individual MTAs on Block A; (5) Orally auction individual Block B MTAs; (6) Open sealed bids for national Block B and compare the highest bid to the combined total of the individual bids on Block B to determine whether the individual or national bid prevails in Block B; (7) If the national bid prevails in Block B, allow the winning bidder, including any entities that meet the

ownership attribution test, to withdraw any winning MTAs in Block A; (8) Re-auction the MTAs that have been returned or allow a grace period of six months for the winning national bidder in Block B, including any entities that meet the ownership attribution test, to achieve compliance with any ownership restrictions, including the 40 Mhz restriction.

This proposed bidding procedure for Blocks A and B is the same as the Commission's proposal, with the addition of the option to withdraw or to be given a grace period to come into compliance with the ownership restrictions. It should be emphasized that the right to withdraw or to take advantage of the grace period would apply only in the limited circumstance that individual bids win in Block A, a national bid wins in Block B and the winning bidder for Block B, including entities that meet any ownership attribution standard, had won individual MTAs in Block A. It would not occur in any other instance. For example, if the national bid won Block A, that entity and any entity affiliated with it would not be eligible to bid on Block B at all. If the individual bids won on both Block A and Block B, no problems would be created because the entity or any affiliated entity would not be eligible to bid on any individual MTAs they had already won in Block A.

These modifications will enable entities that are participants in a national bid to also bid separately for an individual MTA in case the national bid is not successful in either block, without risk of violating the rule against accumulating more than 40 MHz in an area. Although this procedure may at first glance appear to reduce the receipts from the auction when the winning bid is withdrawn; that is not actually the effect. Without the ability to withdraw, the

entity and its affiliates could and would never have made the winning bid. By allowing withdrawal of bids in such a circumstance the Commission can assure that the highest possible winning bid is submitted on all licenses and that bids are not withheld because of a possibility that an unintentional accumulation of spectrum may result.

This proposal is the best way to get the most participants involved in the bidding process. If an entity is not allowed to proceed with these parameters in mind, a substantial number of entities will not be able to participate in bidding for the 30 MHz blocks. Unless this option is adopted in the final rules, if an entity values a national license more than an individual license, that entity and its affiliates would have to sit out bidding on individual Block A MTAs, even though the entity might value the individual MTA more than any other entity and even though the entity might not obtain a national license.

III. Attribution Rules

Another instance in which inflexible bidding rules will preclude or unfairly penalize many potential bidders concerns the rules attributing all PCS ownership interests of 5% or more to the holder of such interest. The problem is caused by what can be termed a "common 5% owner." For example, Entity A owns 5% of GCI and 5% of Business ABC. If GCI acquired a 30 MHz license in any area and Business ABC acquired 20 MHz or more in the same area, the proposed 5% attribution rule would cause a violation of the rule that no more than 40 MHz can be accumulate in any area. This would result because GCI's 30 Mhz and

Business ABC's 20 MHz would both be attributed to Entity A, the common 5% owner.

GCI believes that ownership patterns as set out in the example may be common. This is particularly true given the fact that businesses other than existing telecommunication companies are encouraged to participate in the PCS auction.

Given the rule, it would be necessary for each bidder to know not only each of its own 5% owners, but also to know every other business in which any of its 5% owners owned 5%. This is virtually impossible, again particularly in view of the fact that businesses other than existing telecommunications companies are encouraged to participate in the PCS auction.

These problems are particularly significant because the auctions will be conducted by oral bid, with the possibility that bidders may be "masked." As each license is auctioned, each potential bidder for other licenses covering the same or larger (for combinational bid) areas would have to determine whether there was any common 5% owner.

The 5% attribution standard rule presents the possibility that a winning bidder for one of the licenses auctioned early in the process could preclude another entity from purchasing a license for the same area. An early purchaser of any 30 MHz MTA license would preclude another entity from purchasing a national license in the other block; from purchasing the other 30 MHz MTA license; and, from purchasing any 20 MHz license. This preclusion would operate, through the "common 5% owner" rule, even when the entities purchasing the separate licenses have no common control and when, in fact the

separate entities may be true competitors. The worst possibility is that an entity would purchase a license with the sole intent to preclude another, possibly adverse entity with a common 5% owner from purchasing another license in the same area, including a national license. An entity with such intentions could even go to the market and purchase 5% of another entity to sabotage the goals of the other entity.

GCI recognize that the reason the 5% rule was proposed is to prevent an excessive concentration of licenses in a given area. GCI supports that goal. Therefore, a solution to the problems set out above must be achieved without sacrificing the goal of preventing an excessive concentration.

This problem may be address by allowing a grace period during which winning bidders are allowed to achieve compliance with the ownership restriction. As discussed, the present rule is so strict that bidders may unknowingly bid for a license that would cause a violation. Further, one bidder could, either unintentionally or with a specific perverse intent, cause another entity with a common 5% owner to violate the rule. In each such instance a winning bidder should be allowed, without penalty, to take such actions necessary to comply with ownership restrictions. Again, such flexibility will encourage bidding by qualified applicants. By encouraging bidding, the Commission will promote all the objectives of Section 309(j).

This problem may also be addressed, in part, by raising the 5% figure to a higher number, such as 20%, particularly for publicly traded companies. It is reasonable to treat publicly traded companies differently because such companies are more open in their ownership, less susceptible to hidden control,

and because the company has little or no control over anyone's ability to obtain 5%. An interest of 20% is high enough to significantly reduce the problems discussed above, but low enough to meet the Commission's goal. In a related situation, the Commission chose 20% as the ownership attribution standard for cellular operators applying for PCS licenses.² The Commission balanced the desire to restrict incumbent cellular owners from obtaining undue market power with the desire not to be too restrictive, and the Commission determined that the two concerns are best accommodated by a test that allows ownership of less than 20 percent. The instant issue is quite similar and the same standard should be adopted.

Further, the 5% rule should certainly be revised for "passive" investors, such as funds. Such passive investors take no part in control of management, and an attribution standard significantly higher than 5% is appropriate for such investors.

IV. Establishment of a Non-Dominant Carrier 30 Mhz Block

GCI proposes that the Commission designate one of the 30 MHz Blocks, preferably Block A, as the non-dominant carrier block. Dominant cellular carriers³ should be precluded from owning licenses in the non-dominant block.

²Second Report and Order, Gen. Docket 90-314, FCC 93-451 (released October 22, 1993).

³As used herein, dominant cellular carriers includes any cellular carrier that cover more than 5% of the nation's population.

Unless the dominant cellular carriers are precluded from owning licenses in either Block A or B there is a significant risk that all or a major portion of the MTA's in each of the 30 MHz Blocks will be acquired by these cellular carriers. Acquisition of all or a major portion of the MTA licenses in both Blocks A and B by the dominant cellular carriers would adversely affect each of the objectives set out by Congress and the Commission and would effectively preclude even the possibility of any party obtaining a nationwide license for Block A or B.

As the Commission has recognized, the existing duopolistic cellular market has not achieved all of the benefits that are desirable and that would result from a truly competitive marketplace. The existing cellular market favors the carriers over the consumers, as compared to the results of a competitive marketplace. Because PCS is a potential competitor to cellular service, the existing dominant cellular carriers have incentives to purchase the large spectrum blocks outside of their existing service areas in order to preserve, to the extent possible, the benefits they receive from the existing market.

Acquisition of a major portion of the MTA licenses by these carriers in the 30 MHz blocks would adversely affect all of the Commission's objectives for PCS auctions. Cellular carriers do not have an incentive to rapidly deploy a service that will compete with existing cellular service and potentially compete with their landline service. An excessive concentration of the PCS licenses in the dominant cellular carriers would thwart competition and preclude a wide variety of applicants from obtaining PCS licenses. Further, this would preclude the deployment of PCS as promised, preventing PCS from achieving its potential. Efficient and intensive use of the electromagnetic spectrum would not be

promoted, again because the cellular companies do not have an incentive to promote PCS particularly when there are no other viable competitors with large spectrum allocations with whom they must compete.

Unless the dominant cellular carriers are precluded from either Block A or B, there will be very little chance that any party could achieve a nationwide license for Block A or B. Based on the perverse incentives of the dominant cellular carriers discussed above, those cellular carriers will bid up the price of individual MTA licenses to an extent that a nationwide bid has no chance of success.

GCI recognizes that one of the goals of the auction is to raise money for the government, and it may be generally appropriate to do so by selling the licenses to those who value the license the most. However, this logic does not apply when the value of the license is based on the incentives of the cellular carriers that are contrary to the other goals of the Commission. Concentration of the large spectrum licenses among the various dominant cellular carriers could even prevent realization of some of the most important promises of PCS, including a ubiquitous nationwide system.

If the Commission adopts such a restriction, the dominant cellular carriers should be allowed to bid only for Block B. This will facilitate the fewest number of conflicts occurring from the auction sequencing outlined above.

V. Miscellaneous Issues

A. Sequence for Blocks C through G

Blocks C through G are to be auctioned on a BTA basis, with Blocks C and D set-aside for small business, rural telephone companies, women and minorities, the designated entities. Each of these Blocks should be auctioned after Blocks A and B, in the following order: (1) sealed bids for the entire MTA; (2) orally auction the individual BTAs; (3) compare the highest sealed bid to the total of the individual BTAs. Blocks E through G should be auctioned the same as Blocks C and D allowing the geographic buildup from the BTAs to a single MTA. Any further build-up will make the winner in an area almost indeterminate. Regional build-ups comparing certain combinational MTAs against BTAs, individual MTAs or other regional build-ups of MTAs would be impossible to determine.

B. Sequence Within Each Block

The Commission has proposed to start with the largest MTA by population in Block A and proceed to the smallest MTA. GCI believes that the opposite should occur. The Commission should start with the smallest MTA in Block A and proceed to the largest MTA in Block A. This is consistent with most auctions, in which the auctioneer starts with the smallest, less valued item and builds up to the grandest item. This will enable bidders to evaluate the various MTAs as the auction proceeds to those that are largest and, presumably, the most valuable.

C. Set-Aside for Designated Entities. Particularly Rural Telephone Companies

Designated entities are given an opportunity to obtain PCS licenses through set-aside blocks and liberalized payment terms. However, the scope of preference should not be unlimited. For example, the liberalized payment terms should not apply outside the set-aside blocks. More importantly, rural telephone companies should not be a designated entity outside of their franchise area. The whole reasoning behind the set-aside rules is to help PCS development in rural areas; thus, the set-aside should apply only to the rural telephone companies in the BTA. For example, rural telephone companies located in Maine should not receive the benefits of the set-aside and payment structures for licenses in Alaska, Montana or anywhere outside of their franchise area in Maine.

D. Bidders Should Be Masked

The identity of the bidders should be masked. If the identity of bidders is known, some entities may strategically purchase blocks with the sole intent of blocking the plans of another bidder. Although it is desirable to sell licenses to the highest bidder who desires to use the license, it is not desirable to sell the license to the highest bidder who only wants to prevent the efficient and intensive use of the spectrum.

E. Long Form Applications

Applicants should be required to submit only the short form to participate in the auction. The Commission will be unable to review the long form applications prior to the auction. Therefore, the winning applicant should be allowed to submit the long form application within a reasonable period of time

after winning the auction so that petitions to deny can then be dealt with on the winning application only.

This will eliminate somewhat the need to modify applications prior to the auction. However, modifications should not be prohibited on the short form, letter perfect application.

F. Auctions for Non-PCS Services

The Commission proposes to auction various services, including Fixed Satellite Service, Point-to-Point Microwave Services, Mobile Satellite Services, among others. It is unclear how these applications could ever be mutually exclusive. For example, it is not clear if fixed satellite service is considered mutually exclusive by the town, by the exact location or for some other reason. It would not be desirable to limit earth stations and microwave facilities from serving the same locations; in fact, this would be anti-competitive. Auctioning in these instances does not appear appropriate.

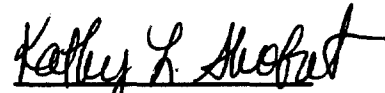
Conclusion

The Commission must follow the objectives outlined by Congress in designing the structure for competitive bidding so that all bona fide applicants can fully participate. The Commission must link Blocks A and B as proposed herein so that bidders are not either unable to bid or disqualified as result of others actions. The 5% attribution rule must either be changed to a higher number, such as 20%, especially for publicly traded companies and a grace period must be allowed for winning bidders to come into compliance with any ownership restrictions. Also, for passive investors, such as funds, the 5% rule

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Respectfully submitted,

GENERAL COMMUNICATION, INC.




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November 10, 1993

STATEMENT OF VERIFICATION


I have read the foregoing, and to the best of my knowledge, information and belief there is good cause to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed November 10, 1993.



Kathy L. Shobert
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CERTIFICATE OF SERVICE

I, Kathy L. Shobert, do hereby certify that on this 10th day of November, 1993,
a copy of the foregoing Comments of General Communication, Inc. was mailed
by first class mail, postage prepaid to the parties listed below.


Kathy L. Shobert

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